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Message Text

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22-12
ACTION ERDA-07

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DEPT PASS ERDA/IA

E.O. 11652: N/A
TAGS: FR, TECH
SUBJECT: NUCLEAR COOPERATION DRAFT AGREEMENT BETWEEN
CEA AND ERDA

REF: PARIS 29257

1. SUMMARY: ON FRIDAY, JANUARY 9, EMBASSY SCICOUN
DISCUSSED STATUS OF CEA REVIEW OF DECEMBER 5 ERDA
VERSION OF DRAFT AGREEMENTS WITH CEA OFFICIALS
FRANCOIS PERROT AND YVES LE NIGER. PRIOR TO RE-
SPONDING TO ERDA, CEA WISHES TO RECEIVE ARTICLE 4
OF THE HTGR PROTOCOL AND ERDA'S COMMENTS ON THE
CEA WASTE MANAGEMENT PROTOCOL WHICH WERE PROMISED
TO BE FORWARDED QUICKLY IN DR. ROBERTS' LETTER OF
DECEMBER 5. CEA WOULD LIKE CLARIFICATION OF ERDA'S
UNDERSTANDING OF THE APPLICATION OF ARTICLE
6 OF THE GENERAL AGREEMENTS; THE NEW PARA 1 PRO-
VIDES FOR A UNILATERAL DETERMINATION OF PRIVILEGED
INFORMATION, BUT THE NOTE ON THIS ARTICLE ATTACHED
TO THE LETTER OF DECEMBER 5 STATES THAT THE PRIVILEGED
INFORMATION WILL HAVE TO MEET THE FOUR CRITERIA.
CEA BELIEVES THAT THE ARTICLE 8 INCLUDED IN THE
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DECEMBER 5 DRAFT GENERAL AGREEMENT MUST HAVE BEEN

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PUT IN BY MISTAKE. IT IS IDENTICAL TO ARTICLE 9
OF AN OLD VERSION WHICH CEA HAS REJECTED AND EXTEN-
SIVELY DISCUSSED. ROBERTS' DECEMBER 5 LETTER IMPLIES
THAT EXCEPT FOR THE "GEOGRAPHIC AREA" ITEM, THE ARTI-
CLE REFLECTS OTHER CEA VIEWS, WHICH CEA BELIEVES IS
NOT THE CASE. ERDA COMMENTS AND THE TWO ADDITIONAL
PAPERS ARE DESIRED AND SHOULD BE TRANSMITTED THROUGH
THIS EMBASSY. END SUMMARY.

2. CERTAINLY AT LEAST ANOTHER NEGOTIATION SESSION IS
REQUIRED TO CONCLUDE THE DRAFTING OF THE AGREEMENT
AND ITS CURRENT PROTOCOLS. HOPEFULLY, SUCH INFOR-
MAL CONVERSATION AS COVERED BY THIS CABLE WILL HELP
MINIMIZE MISUNDERSTANDINGS AND AREAS OF DISAGREEMENT
AND MAKE THE NEXT SESSION A WELL PREPARED NEGOTIATION.

3. IN ASKING FOR THE TWO ADDITIONAL PAPERS, ARTICLE
4 OF THE HGTR PROTOCOL AND THE COMMENTS ON THE WASTE
MANAGEMENT PROTOCOL, LE NIGER NOTED THAT CEA WANTED
TO SEE THE TOAL PACKAGE AND AFTER FULL REVIEW OF
ALL DOCUMENTS, IT WOULD RESPOND TO ERDA. THIS
ADDITIONAL TIME GIVES CEA THE OPPORTUNITY TO MAKE
SOME PROGRESS IN OTHER FACETS OF ITS BREEDER PROGRAM,
E.G., SUPER PHENIX NEGOTIATION, THE BECHTLE STUDY,
AND THE IDEA OF USING THE PHENIX DESIGN AS A PROTO-
TYPE PLANT IN THE ERDA BREEDER PROGRAM, WHICH MAY
EASE ITS NEGOTIATION POSITION ON THIS AGREEMENT.

4. ARTICLE 6 OF THE GENERAL AGREEMENT AS IN THE DECEM-
BER 5 DRAFT IS ACCEPTABLE TO CEA. PARA 1
PROVIDES FOR A PARTY TO CONSIDER CERTAIN INFORMATION
TO BE OF A PRIVILEGED NATURE. HOWEVER, THE NOTE
ATTACHED TO ROBERTS' LETTER OF DECEMBER 5 STATES
THAT ERDA WANTS IT UNDERSTOOD THAT SUCH INFORMATION
WILL HAVE TO MEET THE FOUR CRITERIA CONTAINED IN THE
EARLIER DRAFT. THUS CEA SEES THE PROBABILITY OF A
DISAGREEMENT IN THAT SOME OF THE INFORMATION IT CON-
SIDERS PRIVILEGED DOES NOT MEET THE FOUR CRITERIA.
PERFORMANCE DATA ON THE PHENIX REACTOR IS CONSIDERED
BY CEA TO BE PRIVILEGED, BUT IT IS HELD BY EDF, A
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UTILITY, AND THUS DOES NOT MEET CRITERIA A OF OLD
ARTICLE 6, PARA 1. THIS ISSUE ALSO EFFECTS THE LMFBR
PROTOCOL AS ITS ARTICLE 4 PARA B RESTS ON THIS SAME
POINT OF PRIVILEGED INFORMATION. CEA PROBABLY
COULD AGREE TO THIS ARTICLE AS WORDED IF IT IS A
FULLY UNILATERAL DECISION AS TO WHAT IS PRIVILEGED
INFORMATION. CEA WOULD APPRECIATE ERDA' FURTHER
CLARIFICATION ON THIS POINT. TO OUR VIEW, THE

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QUESTION IS WILL ERDA ACCEPT THE UNILATERAL DECISION WITHOUT THE CRITERIA--ARTICLE 6 AS DRAFTED--OR MUST THE CRITERIA FIRST BE MET BEFORE THE PARTY CAN CHOOSE TO CONSIDER THE INFORMATION PRIVILEGED?

5. ARTICLE 8 AS PRESENTED IN THE DECEMBER 5 DRAFT APPARENTLY LEFT CEA A BIT NONPLUSED. LE NIGER SAID IT WAS IDENTICAL, TO THE COMMAS, TO AN OLDER VERSION OFFERED BY ERDA AND REJECTED BY CEA. A BASIC PROBLEM TO CEA IS THE POSSIBLE SITUATION (PARA 1 (A)(1): A JOINT DISCOVERY IN A CEA LAB GIVES CEA THE PATENT AND ERDA THE ROYALTY-FREE LICENSE AND ERDA SUB-LICENSES, ROYALTY-FREE, TO A FIRM WHICH COMPETES DIRECTLY WITH A FRENCH FIRM BY USING THE SAME PATENT UNDER LICENSE FROM CEA FOR WHICH THE FRENCH FIRM HAS TO PAY. IT IS CEA POLICY TO COLLECT A ROYALTY ON ITS PATENTS FROM FRENCH (OR ANY) FIRM; CEA ASSUMES ERDA MAY PROVIDE SUB-LICENSES ON A ROYALTY-FREE BASIS. CEA MAY ACCEPT THE SITUATION WHERE THE "GEOGRAPHIC AREA" IS LIMITED TO FRANCE (AND TO THE U.S.) IF IN FOREIGN COUNTRIES THE PARTY'S SUB-CONTRACTOR WERE REQUIRED TO PAY THE SAME ROYALTIES FOR THE USE OF THE SAME PATENT. AN ERDA LICENSEE AND A CEA LICENSEE COMPETING IN A THIRD COUNTRY SHOULD HAVE TO PAY IDENTICAL ROYALTIES. IF THIS IDENTICAL ROYALTY CONCEPT CAN BE AGREED TO, CEA WOULD PROBABLY NOT PERSIST ON THE OECD REGION AS ITS GEOGRAPHIC AREA.

6. ALSO IN ARTICLE 8 THE OLD ISSUE OF ANY INVENTION "MADE OR CONCEIVED" IS BACK TO WHERE IT WAS SEVERAL DRAFTS AGO. THE FRENCH POSITION IS PRESUMED TO BE WELL UNDERSTOOD BY ERDA. THIS ISSUE STOPPED

COLLABORATION IN THE SAFETY ASPECTS OF BREEDER REACTORS.

7. APPRECIATE RECEIVING DEPARTMENT/ERDA GUIDANCE ON THESE ISSUES.
RUSH

NNN

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